

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE EQUITABLE TRUST COMPANY OF NEW YORK, as Sole Trustee Under a Deed of Trust Made by the GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, Dated May 1, 1910, and Supplemental Mortgages Dated June 21, 1911, and April 7, 1913,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a Corporation, WILLIAM T. WALLACE, as Receiver of GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, GUY I. TOWLE, and CARL J. HAHN, as Administrator of the Estate of HARRY M. KING, Deceased, Defendants, and L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McCLELLAND, Deceased, JAKE M. SHANK, and AMERICAN WATER WORKS AND ELECTRIC COMPANY, a Corporation, Interveners.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, a Corporation, Intervener,

vs.

GUY I. TOWLE, CARL J. HAHN, as Administrator of the Estate of HARRY M. KING, Deceased, GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a Corporation, and WILLIAM T. WALLACE, as Receiver of GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, Defendants L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McCLELLAND, Deceased, and JAKE M. SHANK, Interveners, and THE EQUITABLE TRUST COMPANY OF NEW YORK, as Sole Trustee Under a Deed of Trust Made by the GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, Dated May 1, 1910, and Supplemental Mortgages Dated June 21, 1911, and April 7, 1913.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, the INTERMOUNTAIN ELECTRIC COMPANY, THE THOUSAND SPRINGS POWER COMPANY and the GUARANTY TRUST COMPANY OF NEW YORK, GENERAL CREDITORS OF GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY,

Appellants,

vs.

GUY I. TOWLE, CARL J. HAHN, as Administrator of the Estate of HARRY M. KING, Deceased, GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a Corporation, WILLIAM T. WALLACE, as Receiver of GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, and Interveners, L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McCLELLAND, Deceased, and JAKE M. SHANK, and Complainant, EQUITABLE TRUST COMPANY OF NEW YORK, as Sole Trustee Under a Deed of Trust Made by GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, Dated May 1, 1910, and Supplemental Mortgages Dated June 21, 1911, and April 7, 1913,

Appellees.

SUPPLEMENTAL TRANSCRIPT OF RECORD.

Upon Appeals from the United States District Court for the District of Idaho, Southern Division.

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Appellants,

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Appellees.

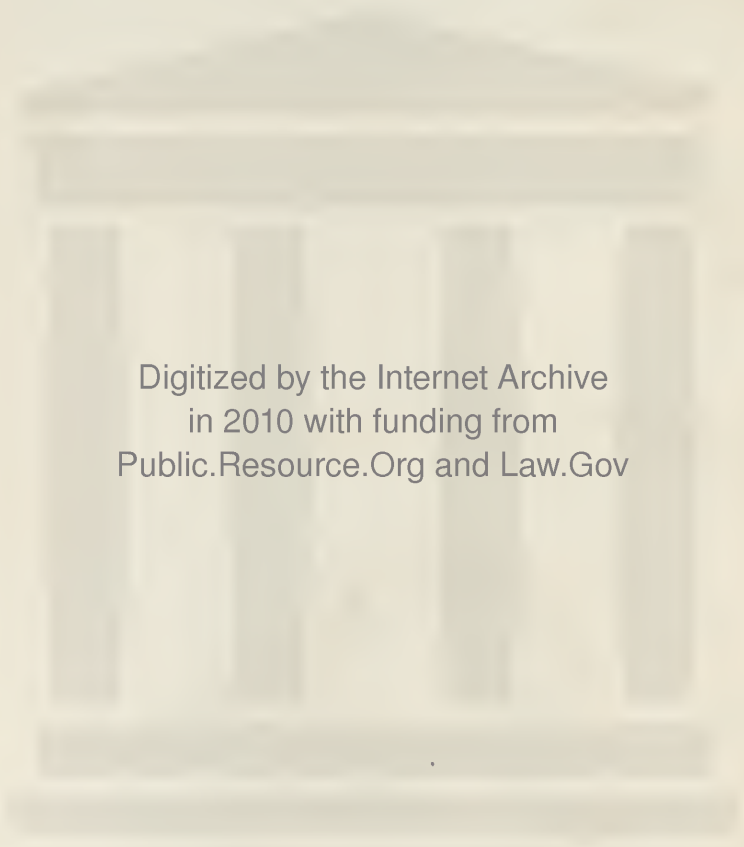
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*United States Circuit Court of Appeals for the
Ninth Circuit.*

THE EQUITABLE TRUST COMPANY OF
NEW YORK, as Sole Trustee Under a Deed
of Trust made by THE GREAT SHO-
SHONE AND TWIN FALLS WATER
POWER COMPANY, Dated May 1, 1910, and
Supplemental Mortgages Dated June 21, 1911,
and April 7, 1913.

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion, WILLIAM T. WALLACE, as Receiver
of GREAT SHOSHONE AND TWIN
FALLS WATER POWER COMPANY,
GUY I. TOWLE, and CARL J. HAHN as
Administrator of the Estate of HARRY M.
KING, Deceased,

Defendants,

and

L. M. PLUMER and E. B. SCULL, Executors of
the Estate of L. L. McCLELLAND, Deceased,
and JAKE M. SHANK,

Interveners.

Petition for Appeal by Intermountain Electric
Company, the Thousand Springs Power Com-
pany, American Water Works and Electric
Company, and Guaranty Trust Company of New
York.

COME NOW the Intermountain Electric Com-

pany, the Thousand Springs Power Company, American Water Works and Electric Company, and Guaranty Trust Company of New York, and, conceiving themselves aggrieved by the decree made and entered in the above-entitled cause on December 6, 1915, and by the order made in said cause pursuant to said decree on March 1, 1916, hereby appeal from said decree and order so made and entered, as aforesaid, to the United States Circuit Court of Appeals for the Ninth Circuit, in so far as said decree and order direct that the fund designated therein as "Unsecured Creditors' Fund" be distributed and paid by the Special Master named in said decree to a certain few unsecured general creditors, viz.: Guy I. Towle, Carl J. Hahn, administrator of the estate of Harry M. King, deceased, Jake M. Shank, and L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to the exclusion of all other creditors of the defendant Great Shoshone and Twin Falls Water Power Company, for the reasons specified in the assignment of errors which is filed herewith, and your petitioners respectfully petition this Honorable Court to allow said appeal, and your petitioners further show:

1. That on the 2d day of November, 1914, the defendant Guy I. Towle commenced a suit in equity in the nature of a general creditors' suit in the United States District Court for the District of Idaho, Southern Division, against the defendant Great Shoshone and Twin Falls Water Power Company (hereinafter called the "Power Company"),

alleging in his bill of complaint that said Power Company was indebted to him in the sum of \$12,857.29, and in effect that said Power Company was also indebted to a large number of other persons, partnerships and corporations, in an amount far in excess of the reasonable value of its assets, unless properly conserved and that said Power Company was unable to meet its obligations, many of which were past due, and that unless a receiver was appointed and the assets of said corporation were conserved and administered under the direction of the Court such assets would be largely dissipated and wasted and the value thereof greatly depreciated by attachment proceedings and numerous suits instituted by its creditors, and said Towle, plaintiff in said action, prayed that a Receiver be appointed of all the property and assets of said corporation, with power to continue the operation of the properties of said Power Company as a going concern for the benefit of its creditors, and said Towle alleged such other facts and prayed for such other relief as is usual and customary in a bill of complaint in a general creditors' suit against public service corporations.

2. That thereafter and on said 2d day of November, 1914, said Power Company entered its appearance in said cause admitting all the allegations of said bill of complaint and joining in the request for the appointment of a Receiver, and thereupon on said 2d day of November, 1914, the defendant William T. Wallace was duly appointed by said Court Receiver of all the property, real, personal

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and mixed, equities, rights, franchises, and assets of said Power Company, and said Wallace immediately qualified as such Receiver and thereupon took immediate possession, charge and control of all of said property, rights and assets, and ever since has been and still is the Receiver of said Power Company in charge of all its assets, property, rights and franchises, except such as were sold to the Electric Investment Company on the 8th day of January, 1916, and hereinafter more particularly set forth.

3. That in the order appointing said William T. Wallace Receiver of said Power Company, it was ordered, adjudged and decreed that all persons, firms and corporations whatsoever and all creditors of said Power Company be and by said decree were restrained and enjoined from interfering with, attaching, levying upon, seizing or in any manner whatsoever disturbing any of the property, rights or franchises of said Power Company.

4. That thereafter and on May 4th, 1915, said Court entered an order in said cause directing said Receiver to notify all creditors of said Power Company to file their claims with said Receiver on or before August 10th, 1915, and that all claims not presented for filing with the Receiver or presented by intervention within said time, should be barred from any participation in the assets of the receivership estate; that in accordance with said order and a certain supplemental order permitting the petitioner, Guaranty Trust Company of New York, to file its claim on a later date, your petitioners

duly filed their claims with said receiver as follows:

(a) Said American Water Works and Electric Company filed its claim on the 5th day of August, 1915, in the sum of \$1,268, 434.66.

(b) Your petitioner The Thousand Springs Power Company filed its claims on the 9th day of August, 1915, in the aggregate sum of \$10,000.00.

(c) Your petitioner the Intermountain Electric Company filed its claim on the 9th day of August, 1915, in the sum of \$4,717.13.

(d) Your petitioner the Guaranty Trust Company of New York filed its claim on September 23d, 1915 (a supplemental order having been made in its behalf permitting the filing of such claim on said date), in the sum of \$4,427,443.70.

5. That the defendant Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, on May 17th, 1915, filed his claim with said Receiver in the sum of \$5,590.00.

That the intervener Jake M. Shank filed his claim with said Receiver on the 14th day of August, 1915, for the sum of \$4,000.00.

That the interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, filed their claim with said Receiver on August 10th, 1915, in the sum of \$20,000.00; and on the 11th day of August, said L. M. Plumer and E. B. Scull further filed with the clerk of said court what was denominated a petition in intervention in said cause, for the alleged purpose of setting up their claim in said receivership suit by a petition in intervention, to the end that they might be permitted

to participate in the distribution of the assets of the receivership estate in said cause, but claiming no lien upon any of the assets or right or interest therein other than as general creditors of said Power Company.

6. That all of said claims and a number of claims filed by other creditors, the exact amount thereof being to your petitioners unknown, were filed pursuant to said order of Court and notice of the Receiver requiring the filing of claims against the Power Company for allowance by the Receiver and Court to the end that the same might be entitled to share in the equitable distribution of the assets of said Power Company, pursuant to law and the principles of equity governing the administration and distribution of the assets of insolvent debtors by courts of equity and by Receivers in suits brought by one or more creditors in behalf of themselves and all other creditors of the insolvent debtor.

7. That thereafter and on the 24th day of December, 1915, the Court entered an order in said cause directing that all persons interested therein and desiring to contest the validity or the amount due upon any claim filed with said Receiver, as aforesaid, should on or before the 17th day of January, 1916, file their objections to said claims in said cause, and that a hearing thereon should be had on the 14th day of February, 1916, at 2 o'clock P. M.

8. That on said 14th day of February, 1916, the matter of the allowance of said claims came on for hearing, and no objection having been filed to any of the claims described above, all of said claims were

considered allowed, excepting, however, the following claims which had been presented to the Judge at Chambers and allowed *ex parte* without notice to or knowledge of such hearing by your petitioners: The said L. M. Plumer and E. B. Scull, executors as aforesaid, obtained the allowance of their said claim on the 16th day of October, 1915, in the sum of \$15,625.00, and on the same day the said defendant Guy I. Towle likewise without notice to or knowledge thereof by your petitioners obtained the allowance of his claim at Chambers in the sum of \$13,963.00; and in the same manner the said intervenor Jake M. Shank on the 25th day of October, 1915, obtained the allowance of his claim in the sum of \$4,390.00.

9. That on the 14th day of April, 1915, the complainant Equitable Trust Company of New York commenced in said court a suit against said Power Company and its said Receiver, and the said Carl J. Hahn and the said Guy I. Towle for the foreclosure of a certain mortgage bearing date the 1st day of May, 1910, and certain Supplemental Mortgages dated, respectively, June 21st, 1911, and April 7th, 1913, all executed by the Power Company and purporting to cover all the property, real, personal and mixed, and all assets, rights and franchises of the Power Company, and such proceedings were had therein that said cause was, as your petitioners have since learned, in the forepart of October, 1915, set for trial for October 25th, 1915, and that on the 23d day of October, 1915, as your petitioners have since learned the said intervenors

L. M. Plumer and E. B. Scull, executors as aforesaid, and the said Guy I. Towle obtained leave to intervene in said foreclosure suit and filed their complaint in intervention in said cause setting forth that the mortgages so sought to be foreclosed by The Equitable Trust Company of New York had not been executed in accordance with the laws of the State of Idaho relative to mortgages on personal property and that the same did not constitute a lien upon such personal property, but that such property should be sold separately and the proceeds thereof applied to the payment of the claims of said Towle and Plumer and Scull, and thereafter and on the 25th day of October the said Jake M. Shank likewise filed his complaint in intervention in said foreclosure suit in substantially the same form and making substantially the same charges, claims and contentions as the said Towle, Plumer and Scull; that the Court upon said cause being called for trial on the 25th day of October, 1915, directed the Receiver to file its answer in said cause, whereupon said Receiver on the 26th day of October, 1915, filed his answer on said foreclosure suit, setting forth the nature of the property owned by said Power Company and the manner in which some of said property had been acquired, praying, among other things, that only so much thereof be sold as is covered by the liens described in the bill of complaint and that the Receiver be given all proper relief.

10. That thereafter and on December 6th, 1915, the Court entered its decree in said cause adjudg-

ing and decreeing that said mortgages had not been executed in accordance with the statutes of the State of Idaho relative to mortgages on personal property, and ordering and decreeing that the defendants Towle and Hahn, and the interveners, Plumer, Scull and Shank, general creditors of said Power Company who had intervened in said foreclosure suit after obtaining the allowance of their claims in said general creditors' suit, had by virtue thereof obtained a claim or preference over other general creditors and acquired a lien upon such personal property superior to the lien of said mortgages and superior to the rights of said Receiver and other general creditors of the Power Company; and it was ordered and decreed that the proceeds from the sale of said personal property be by the Special Master placed in a fund denominated in said decree the "Unsecured Creditors' Fund," and that said Special Master pay out of such fund the claims of said Towle, Hahn, Plumer, Scull, and Shank in full, and that the balance, if any, out of the proceeds from such personal property be paid to the Equitable Trust Company of New York.

11. That thereafter and on the 8th day of January, 1916, the Special Master, pursuant to the terms of said decree, caused all the property and assets of said Power Company, except cash on hand and certain bills and accounts in the possession of the Receiver, to be sold at public sale, and the same were thereupon bid in and purchased by the Electric Investment Company for the sum of \$2,000,-000.00, which sale was thereafter and on February

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16th, 1916, duly confirmed by the Court, and out of such proceeds of sale the sum of \$45,000.00 was placed in said "Unsecured Creditors' Fund," the same being the amount of the proceeds from the sale of such personal property; and thereafter and on March 1st, 1916, said Court ordered and directed such Special Master to pay in full out of said "Unsecured Creditors' Fund" the claims of the said Towle, Hahn, Plumer, Scull and Shank.

12. That on the 14th day of February, 1916, your petitioner The American Water Works and Electric Company filed its petition for leave to intervene and complaint in intervention in said foreclosure suit on behalf of itself and all other general creditors, seeking thereby to obtain for the benefit of all of said general creditors the said "Unsecured Creditors' Fund," and praying that it might be ordered and decreed that said fund should be paid over by the Special Master to the receiver in said general creditors' suit for distribution in said suit among all the creditors of said Power Company according to their respective rights and interests and alleging and showing that it would be unjust, unconscionable and unfair for said Towle, Hahn, Plumer, Scull and Shank to obtain the payment of their claims in full and to allow none of said proceeds to be paid to the Receiver or to other general creditors. Thereupon the Court denied said application in intervention and declined to modify its said decree relative to the application of the proceeds from such personal property.

13. Thereafter an appeal was perfected by said

Equitable Trust Company of New York from said decree and from said order of March 1st, 1916, and an appeal was also perfected by said American Water Works and Electric Company from said order of March 1st, 1916, and from the order of the Court declining to permit said petitioner to intervene in said foreclosure suit; that said appeals have been assigned for hearing in this court on the 2d day of June, 1916, being Cause No. 2791 now pending in this court, and your petitioners beg leave to refer to the record in said cause for a full and complete statement of the contents of the pleadings, orders, and other documents hereinbefore referred to.

14. That your petitioners believing that said District Court had by its said decree and by its said order of March 1st, 1916, wherein it directed the Special Master to pay the claims of said Towle, Hahn, Plumer, Scull and Shank in full, contrary to law and the principles of equity governing the administration of the assets of insolvent corporations for the equal and *pro rata* benefit of all creditors, permitted certain general creditors to obtain an unconscionable and unfair advantage over other general creditors of said Power Company and that the Court had in effect withdrawn from the receivership estate certain assets of the Power Company and directed that the same be applied to the special benefit of certain creditors, requested the Receiver to perfect an appeal from said decree and from said order of March 1st to the United States Circuit Court of Appeals for the Ninth Cir-

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cuit, and your petitioner the American Water Works and Electric Company further offered to pay all the expenses of said appeal incurred by said Receiver, including counsel fees, in the event such appeal should be fruitless, or in the event the decree and order of said District Court should be affirmed. Said request so signed by your petitioners and addressed to said Receiver being in words and figures following, to wit:

“Salt Lake City, Utah. March 13, 1916.

William T. Wallace, Esq.,

Receiver, Great Shoshone and Twin Falls
Water Power Co., Boise, Idaho,

Dear Sir:—

The undersigned general creditors of the Great Shoshone and Twin Falls Water Power Company, respectfully request that you perfect an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decision of the Honorable District Court of the United States for the District of Idaho, Southern Division, in the foreclosure suit brought by the Equitable Trust Company of New York, as Trustee, against the Great Shoshone and Twin Falls Water Power Company, William T. Wallace as Receiver of said Company, Guy I. Towle and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, wherein the Court held that you as Receiver were not entitled to contest the validity of the trust deed and the supplemental mortgages sought to be foreclosed in said

cause as liens upon and against the personal property owned by said Great Shoshone and Twin Falls Water Power Company, and wherein the defendants Guy I. Towle and Carl J. Hahn, as administrator, and the interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank were adjudged and decreed to have a lien or claim against such personal property prior and superior to the lien or claim of the Receiver as the representative of all the creditors of said Great Shoshone and Twin Falls Water Power Company.

We make this request for the reason that we understand the funds and assets in your possession available for distribution or payment to the general creditors will be sufficient to pay only a small part of the amount due, and we understand that the amount ordered paid to the defendants and interveners above named, who had also filed their claims in the general creditors suit, aggregates approximately \$45,000.00, and we believe this money should be paid to you as Receiver for distribution and administration in the general creditors' suit.

Respectfully."

15. That after receiving said request said Receiver conferred with its counsel relative to perfecting said appeal and counsel for said Receiver thereupon conferred with the Judge of said court under whose direction the Receiver was acting relative to perfecting an appeal from said decree and order, and the Judge of said court disapproved of such appeal being taken by the Receiver, and your

petitioners in order to bring the matter fully to the attention of the Court filed a petition in said general creditors' suit setting forth more at length the circumstances and the reasons why such appeal should be perfected and requesting the Court to instruct the Receiver to take said appeal, a copy of which said petition is hereto attached, marked Exhibit "A" and made a part hereof, and your petitioners pray that the same may be considered with the same force and effect as if it were herein set forth at large.

That said District Court promptly denied said petition and refused to permit said Receiver to take an appeal from said order and decree.

That your petitioners are now remediless in the premises unless the appeal be allowed by this Honorable Court or one of the Judges thereof. Your petitioners further show that the time for perfecting an appeal from said decree will expire on the 6th day of June, 1916; that an application to permit an appeal to be taken by your petitioners in the place and stead of said Receiver on behalf of themselves and all other creditors of said Power Company would be disallowed by the District Court or the Judge thereof; that said Court is now sitting at Coeur D'Alene in the northern part of the State of Idaho, and that your petitioners would not have time to make application to this Court for the allowance of said appeal or for a review of said order after the same had been presented to and refused by said Court or the Judge thereof.

WHEREFORE, your petitioners pray that this appeal may be allowed from said decree and order, either in the name of the Receiver or in the name of your petitioners, but at the cost and expense of your petitioners who desire to prosecute such appeal by their counsel, and that citation issue as provided by law, and that such supplemental record, if any, as may be necessary in connection with the record in the appeals of said Equitable Trust Company of New York and American Water Works and Electric Company hereinbefore mentioned, Cause No. 2791 of this court, now pending in this court and assigned for hearing on June 2d, 1916, may be prepared and certified to this Court by the clerk of said District Court, and for such other relief as may be meet and proper under the circumstances.

INTERMOUNTAIN ELECTRIC COMPANY.

THE THOUSAND SPRINGS POWER COMPANY,

AMERICAN WATER WORKS AND ELECTRIC COMPANY.

GUARANTY TRUST COMPANY OF NEW YORK.

By WYMAN & WYMAN,
Their Solicitors.

FRANK T. WYMAN,
Of Counsel.

United States of America,
District of California,
County of San Francisco.

Frank T. Wyman, being first duly sworn, upon his

oath deposes and says: That he is one of the solicitors for the petitioners above named; that he has read the above and foregoing petition and knows the contents thereof and that he believes the facts therein stated to be true; that he makes this verification for and on behalf of said petitioners for the reason that said petitioners are not residents of the State of Idaho or California, but each and all of said petitioners are foreign corporations having no officers within the States of Idaho or California.

FRANK T. WYMAN.

Subscribed and sworn to before me this 31st day of May, 1916.

[Seal]

CHARLES R. HOLTON,
Notary Public.

Appeal allowed this 2d day of June, 1916.

WM. B. GILBERT,
Circuit Judge.

It is ordered that the appellants' bond on appeal be given in the sum of five hundred dollars, the same to be approved by the clerk of the Circuit Court of Appeals.

WM. B. GILBERT,
Circuit Judge.

Exhibit "A."

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 509.

GUY I. TOWLE,

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY,

Defendant.

PETITION.

COME NOW your petitioners, Guaranty Trust Company of New York, a corporation organized and existing under the laws of New York, American Water Works and Electric Company, a corporation organized and existing under the laws of Virginia, Intermountain Electric Company, a corporation organized and existing under the laws of Utah, and The Thousand Springs Power Company, a corporation organized and existing under the laws of Utah, creditors in the above-entitled cause, whose claims have been duly filed, and respectfully show the Court as follows:

That on the 2d day of November, 1914, Guy I. Towle, plaintiff above named, on behalf of himself and all other creditors of Great Shoshone and Twin Falls Water Power Company, defendant above named and hereinafter called "Power Company," commenced in this court this general creditors' suit

against said Power Company and in his bill of complaint alleged and showed that said Power Company was indebted to him in the sum of \$12,857.29, with interest thereon, and that said Power Company was also indebted to a large number of other persons, partnerships, and corporations in an amount far in excess of the reasonable value of its assets, and that said Power Company was insolvent and unable to meet its obligations and that in order to protect the rights of the creditors of said Power Company and to prevent any of said creditors from obtaining an unfair or unconscionable advantage or preference over other creditors by attachment or otherwise, a Receiver should be appointed of all the property, rights and assets of said corporation to take charge of and preserve the property of said Power Company and continue the operation thereof for the benefit of its creditors, and further alleged such other facts and prayed for such other relief as is usual and customary in a bill of complaint in a general creditors' suit against public service corporations, as more fully appears in the complaint of said Guy I. Towle on file herein.

That thereafter and on the 2d day of November, 1914, said Power Company entered its appearance in this cause by answer, admitting all of the allegations of said bill of complaint and joining in the request for the appointment of a Receiver, and thereupon on said 2d day of November, 1914, William T. Wallace was duly appointed by this Court Receiver of all the property, real, personal and mixed, equities, rights and franchises of said Power Company

and immediately qualified as such Receiver by giving bond and taking the oath required, and thereupon took possession, charge and control of all the property, rights and assets of said Power Company and ever since has been and still is in possession and control thereof and is entitled to the possession and control thereof as Receiver of this court appointed in this cause.

That in said order of November 2d, 1914, appointing said William T. Wallace Receiver of said Power Company, it is ordered, adjudged and decreed that all persons, firms and corporations whatsoever, be and by said decree were restrained and enjoined from interfering with, attaching, levying upon, seizing or in any manner whatsoever disturbing any of the property, rights or franchises of said Power Company.

That thereafter and on the 4th day of May, 1915, this Honorable Court entered an order in said cause directing said Receiver of said Power Company to notify all creditors of said Power Company to file their claims with said Receiver on or before August 10th, 1915, and that all claims not presented for filing with the Receiver or presented by intervention within said time should be barred from any participation in the assets of the receivership estate.

That on the 5th day of August, 1915, your petitioner, American Water Works and Electric Company, filed its claim with said Receiver pursuant to said order of Court and the notice given thereunder by said Receiver showing that said Power Company was indebted to said petitioner in the sum of \$1,268,-

434.66, as more fully appears from the claim of said petitioner on file herein and which sum was and is justly due from said Power Company to your petitioner.

That on August 9th, 1915, your petitioner, The Thousand Springs Power Company, filed its claim with said Receiver pursuant to said order of Court and notice given thereunder by said receiver, showing that said Power Company was indebted to said petitioner in the sum of \$7,000.00, with interest thereon, as more fully appears from the claim of said petitioner on file herein, and which sum is justly due from said Power Company to your petitioner.

That on August 9th, 1915, your petitioner, The Thousand Springs Power Company, filed its claim with said Receiver pursuant to said order of Court and notice given thereunder by said Receiver, showing that said Power Company was indebted to said petitioner in the sum of \$3,000.00, with interest thereon, as more fully appears from the claim of said petitioner on file herein, and which sum is justly due from said Power Company to your petitioner.

That on August 9th, 1915, your petitioner, Inter-mountain Electric Company, filed its claim with said Receiver pursuant to said order of Court and a notice given thereunder by said Receiver, showing that said Power Company was indebted to said petitioner in the sum of \$4717.13, with interest thereon, as appears more fully from the claim of said petitioner on file herein and which sum is justly due from said Power Company to your petitioner.

That on September 23d, 1915, your petitioner, Guaranty Trust Company of New York, filed its claim with said Receiver pursuant to said order of Court and notice given thereunder by said Receiver, showing that said Power Company was indebted to said petitioner in the sum of \$4,427,443.70, with interest thereon, as more fully appears from the claim of said petitioner, on file herein and which sums are justly due from said Power Company to your petitioner.

That on or about the 19th day of May, 1915, Carl J. Hahn, administrator of the estate of Harry M. King, deceased, pursuant to said order of Court and notice given by said Receiver, filed his claim with said Receiver, claiming that said Power Company was indebted to him in the sum of \$5,590.00, together with costs and interest thereon.

That on the 14th day of August, 1915, Jake M. Shank filed with said Receiver his claim against the said Power Company alleging there was due to him about \$4,000.00 from said Power Company, the exact amount being to your petitioner unknown.

That on the 10th day of August, 1915, L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, filed their claim with said Receiver in the sum of \$20,000.00, and also filed with the clerk of this court a pleading denominated a cross-bill or complaint generally describing the said claim, and further stating therein that said executors were entitled to participate in the distribution of the assets of said Power Company and to receive their proportionate share thereof to which the

then value of said claim might entitle them; and on the 11th day of August, 1915, said L. M. Plumer and E. B. Scull, executors as aforesaid, further filed with the clerk of said court their petition in intervention in this cause for the alleged purpose of setting up their claim to the end that they might be permitted to participate in the distribution of the assets of the receivership estate in this cause.

That all of said claims and a large number of other claims aggregating upwards of \$4,000,000, the exact amount thereof being to your petitioners unknown, were filed with the Receiver in this cause pursuant to said order of Court and notice of the Receiver requiring the filing of claims against the Power Company for allowance by the Receiver and Court, to the end that the same might be entitled to share in the equitable distribution of the assets of such receivership estate, pursuant to law and the principles of equity governing the administration and distribution of the assets of insolvent debtors by courts of equity in suits brought by one or more creditors in behalf of themselves and all other creditors of the insolvent debtor.

That thereafter and on the 24th day of December, 1915, this Honorable Court made and entered an order in this cause that all persons interested therein desiring to contest the validity of the amount due upon any claim filed with the Receiver as aforesaid should on or before the 17th day of January, 1916, file in this cause their objections thereto and that a hearing therein should be had on the 14th day of February, 1916, at 2 o'clock P. M.

That on the 14th day of April, 1915, the Equitable Trust Company of New York as sole trustee under a Deed of Trust dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, made by said Power Company, commenced in this court a suit against said Power Company, and the said William T. Wallace as Receiver thereof, and the said Guy I. Towle, and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, being Equity Cause No. 526, and thereafter on September 16th, 1915, filed its supplemental Bill of Complaint therein, for the foreclosure of said Deed of Trust and Supplemental Mortgages given by said Power Company, and purporting to be a first and prior *line* upon all the property, rights, and assets of said Power Company and on the earnings and income thereof; and which said Deed of Trust and Supplemental Mortgages were given to secure the payment of certain first mortgage bonds of said Power Company alleged to be outstanding and unpaid in the principal amount of \$2,230,000.00; and that thereafter on October 27th, 1915, said Power Company as defendant in said Equity Cause No. 526 filed its answer therein, admitting each and every allegation in said bill of complaint and said supplemental bill of complaint as therein set forth and alleged.

That on October 26th, 1915, said Receiver, William T. Wallace, filed his answer as defendant in said Equity Cause No. 526 and prayed that this Court first ascertain the amount actually due from said Power Company and that only so much of the property of said Power Company be sold as is covered by

the lien described in said bill of complaint of said The Equitable Trust Company of New York and that said Receiver be given all proper relief.

That L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Carl J. Hahn, administrator of the estate of Harry M. King, deceased, said Guy I. Towle and Jake M. Shank, general creditors, whose claims have been filed in this cause as aforesaid, having acquired certain information relative to said property of said Power Company upon which a lien or preference might be acquired superior to the lien of the Deed of Trust and supplemental mortgages as aforesaid which The Equitable Trust Company of New York sought to foreclose, by complaint in intervention or answer in said Equity Cause No. 526 in this court, alleged and showed that because said Deed of Trust and Supplemental Mortgages had not been executed or filed as required by the laws of the State of Idaho relative to chattel mortgages, the same did not constitute a lien or claim upon the personal property of said Power Company but that the said interveners and defendants, to wit, the said Guy I. Towle, Carl J. Hahn, administrator as aforesaid, Jake M. Shank, L. M. Plumer and E. B. Scull, executors as aforesaid, as general creditors of said Power Company, had a superior lien or claim upon said personal property, and such proceedings were had upon said complaints in intervention and answers so filed that it was adjudged and decreed upon the issues so raised in said Equity Cause No. 526 in said court, that the said Deed of Trust and Supplemental Mortgages so

sought to be foreclosed by said The Equitable Trust Company of New York had not been executed or filed in accordance with the chattel mortgage statutes of the State of Idaho, and that the claim of said creditors as against said personal property of said Power Company was prior and superior to the lien of said Deed of Trust and mortgages, and it was adjudged and decreed in the decree of foreclosure made and entered by this Court in said Equity Cause No. 526, on December 6th, 1915, that the proceeds from the sale of such property should be placed by the Special Master appointed by this Court in said cause for conducting such sale in a fund known and designated in said decree as the "Unsecured Creditors' Fund," and that out of such fund said Special Master should pay the said Guy I. Towle \$13,963.01, to the said Carl J. Hahn, administrator as aforesaid, \$6,225.15, to the said L. M. Plumer and E. B. Scull, executors as aforesaid, \$15,625.00, and to the said Jake M. Shank, \$4,390.00, with interest at 7% from the date of said decree, viz.: December 6th, 1915.

That such personal property has been sold by said Special Master, together with the other property of said Power Company, and the amount realized therefrom was the sum of \$45,000.00, which is the amount to be placed in said "Unsecured Creditors' Fund" to be paid out and distributed as provided in said decree and as above set forth, and the said sum of \$45,000.00 is the full amount realized from the sale of the property and assets of said Power Company upon which the said Deed of Trust and Supplemental Mortgages so sought to be foreclosed were not decreed a first and

prior lien, being the amount realized from the property and assets of the Power Company available for the payment of the claims of other creditors than the said complainant The Equitable Trust Company of New York; that in addition to said sum of \$45,000.00, your petitioners are informed and believe that there is approximately \$25,000.00 in the hands of the Receiver of said Power Company that may also be available for the payment of claims of said general creditors in this cause, making in the aggregate approximately \$70,000.00 available for the payment of claims aggregating upwards of \$4,000,000.00; that the other property of said Power Company, subject to the prior lien of said Deed of Trust and Supplemental Mortgages was sold for \$2,000,000.00 by said Special Master of this Court under the decree of foreclosure made and entered by this Court on December 6th, 1915, in said Equity Cause No. 526, which amount was less, as your petitioners are informed and believe, than is due the said plaintiff under said decree of foreclosure.

That on the 1st day of March, 1916, this Court in said Equity Cause No. 526 made and entered an order directing said Special Master appointed in said cause to disburse and pay out to said claimants in said cause the amounts found due to them, as aforesaid, by said decree, made and entered in said cause on December 6th, 1915, as aforesaid.

That the general creditors of said Power Company will suffer a large loss in that the assets available for the payment of their claims amount to only about two per cent of the face of said claims; that any payments

made to the said Jake M. Shank, Guy I. Towle, Carl J. Hahn, administrator as aforesaid, and L. M. Plumer and E. B. Scull, executors as aforesaid, in excess of their *pro rata* and proportionate part of the assets available for the claims of general creditors based upon the aggregate amount of the claims of the said general creditors allowed and approved by this Honorable Court will in effect be a payment by the other general creditors to the said Jake M. Shank, Guy I. Towle, Carl J. Hahn, L. M. Plumer and E. B. Scull, and reduce accordingly the amount that can be received by or paid to other general creditors.

That the provisions of said decree of December 6th, 1915, giving to the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull any preference or priority whatsoever over other general creditors of said Power Company or directing said Special Master to make any payments whatsoever to them, are unfair and unjust to your petitioners and other general creditors of said Power Company and that the said claimants who were by said decree allowed a preference as aforesaid over other general creditors had invoked the aid and jurisdiction of this court in said general creditors' suit and sought and obtained the benefit of such suit and by their acts and conduct in said cause acquiesced in and consented to the administration of the affairs of said Power Company for the benefit of all creditors and on the plan of the equitable and *pro rata* distribution to all creditors of all the available assets of said Power Company.

That the Honorable Court in said decree of December 6th, 1915, made and entered in said Equity Cause No. 526, and in its said order of March 1st, 1916, in said cause, directed said Special Master appointed in said cause, to pay to said Guy I. Towle, Jake M. Shank, Carl J. Hahn, and L. M. Plumer and E. B. Scull the full amount due them from the Power Company to the exclusion of your petitioners and all other creditors of said Power Company and granted preference and priority to the said creditors Guy I. Towle, Jake M. Shank, Carl J. Hahn, and L. M. Plumer and E. B. Scull over all of the general creditors of said Power Company represented in said Cause No. 526 by said Receiver and denied the said Receiver the relief prayed for in his answer as aforesaid, and to which he was entitled as the receiver of all the property and assets of said Power Company, and that by said decree and order this Court transferred, took and removed from the receivership estate aforesaid certain assets of said Power Company in which all of the creditors of said Power Company had an interest and applied and devoted the same to the payment in full of the claims of certain of said creditors of said Power Company to the exclusion of your petitioners and all other creditors of the Power Company as aforesaid.

That your petitioners are not parties to said Equity Cause No. 526 in this court except as represented therein by said Receiver, and unless said Receiver as such representative in said Equity Cause No. 526 of your petitioners and of all the creditors of said Power Company, is permitted and directed to perfect

an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decision, decree and order, as aforesaid, of this Honorable Court in said Equity Cause No. 526 for and on behalf of all the creditors of said Power Company, your petitioners will be without relief and said assets taken and removed from said receivership estate, as aforesaid, will not be available for administration and equitable distribution to all the creditors of said Power Company in this cause.

WHEREFORE, Your petitioners pray for an order of this Honorable Court directing the said William T. Wallace, Receiver as aforesaid, to perfect an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decision and decree made and entered by this Court in said Equity Cause No. 526 on December 6th, 1915, and from said order made and entered by this court on March 1st, 1916, in said Equity Cause No. 526, directing said Special Master to disburse moneys in accordance with said decree, for and on behalf of your petitioners and all other general creditors whose claims have been filed in this cause, on such terms and conditions as the Court may deem proper and your petitioners pray for such further relief as may be meet and proper under the circumstances.

Dated this 6 day of April, 1916.

GUARANTY TRUST COMPANY OF
NEW YORK, TRUSTEE,

By WYMAN & WYMAN,

Its Solicitors.

AMERICAN WATER WORKS AND
ELECTRIC COMPANY.

By WYMAN & WYMAN,

Its Solicitors.

INTERMOUNTAIN ELECTRIC COM-
PANY,

By PARSONS & PARSONS,

Its Solicitors.

THE THOUSAND SPRINGS POWER
COMPANY,

By PARSONS & PARSONS,

Its Solicitors.

[Endorsed]: No. 2791. United States Circuit Court of Appeals for the Ninth Circuit. The Equitable Trust Company of New York, Plaintiff, vs. Great Shoshone and Twin Falls Water Power Company, a Corporation et al., Defendants, and L. M. Plumer et al., Interveners. Petition for Appeal by Intermountain Electric Company, The Thousand Springs Power Company, American Water Works and Electric Company, and Guaranty Trust Company of New York. Filed Jun. 2, 1916. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the second day of June, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2791.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, THE INTERMOUNTAIN ELECTRIC COMPANY, THE THOUSAND SPRINGS POWER COMPANY and THE GUARANTY TRUST COMPANY OF NEW YORK, General Creditors of GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY,

Appellants,

vs.

GUY I. TOWLE, CARL J. HAHN, as Administrator of the Estate of HARRY M. KING, Deceased, GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a Corporation, WILLIAM T. WALLACE, as Receiver of GREAT SHOSHONE AND TWIN FALLS WATER POWER

COMPANY, and Interveners, L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McCLELLAND, Deceased, and JAKE M. SHANK, and Complainant, **EQUITABLE TRUST COMPANY OF NEW YORK**, as Sole Trustee Under a Deed of Trust Made by **GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY**, Dated May 1, 1910, and Supplemental Mortgages Dated June 21st, 1911, and April 7th, 1913,

Appellees.

Order Allowing Appeal of Intermountain Electric Co. et al.

Upon oral motion of Mr. Frank T. Wyman, counsel for the appellants in the above-entitled cause, and on consideration of the petition therefor, this day filed, it is **ORDERED** that the appeal of the above-entitled appellants in said cause be, and the same is hereby allowed.

IT IS FURTHER ORDERED that the said papers on appeal, together with such certified Transcript of Record as may be presented, shall be filed as a Supplemental Transcript of Record in case No. 2791, **The Equitable Trust Company of New York**, as Sole Trustee, etc., vs. **Great Shoshone and Twin Falls Water Power Company**, a Corporation, et al., etc., and that the said appeal shall stand submitted on the oral argument made, and briefs on file in said case No. 2791.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

THE EQUITABLE TRUST COMPANY OF NEW
YORK, as Sole Trustee Under a Deed of
Trust Made by THE GREAT SHOSHONE
AND TWIN FALLS WATER POWER
COMPANY, Dated May 1, 1910, and Supple-
mental Mortgages Dated June 21, 1911, and
April 7, 1913,

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion, WILLIAM T. WALLACE, as Receiver
of GREAT SHOSHONE AND TWIN
FALLS WATER POWER COMPANY,
GUY I. TOWLE, and CARL J. HAHN as
Administrator of the Estate of HARRY M.
KING, Deceased,

Defendants.

And

L. M. PLUMER and E. B. SCULL, Executors of the
Estate of L. L. McCLELLAND, Deceased,
and JAKE M. SHANK,

Intervenors.

Assignment of Errors.

COME NOW the American Water Works and
Electric Company, Intermountain Electric Com-
pany, The Thousand Springs Power Company, and

Guaranty Trust Company of New York, and, having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the above-entitled cause on the 6th day of December, 1915, by the District Court of the United States for the District of Idaho, Southern Division, and from an order made and entered in said cause on the 1st day of March, 1916, authorizing and directing the Special Master appointed in said decree to pay in full out of the "Unsecured Creditors' Fund" mentioned in said decree the claims against the defendant Great Shoshone and Twin Falls Water Power Company held by the following creditors, to wit: Guy I. Towle, in the sum of \$13,963.01; Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, in the sum of \$6,225.15; L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, in the sum of \$15,625.00; and Jake M. Shank, in the sum of \$4,390.00, say that said decree and said order made and entered as aforesaid and the decision of the United States District Court for the District of Idaho, Southern Division, in said cause, are erroneous and unjust to these petitioners and appellants, and particularly in this:

(1) Because the Court erred in holding, adjudging and decreeing in its said decree that the "Unsecured Creditors' Fund" in said decree mentioned should be paid to the said Guy I. Towle, Carl J. Hahn, L. M. Plumer and E. B. Scull, and Jake M. Shank, in the respective amounts set forth in said decree, and that the balance, if any, of said fund should then

be paid to the plaintiff, The Equitable Trust Company of New York; and in thereafter ordering the payment and distribution of said "Unsecured Creditors' Fund" to the above-named parties.

(2) Because the Court erred in not holding and decreeing that such "Unsecured Creditors' Fund" should be paid to the Receiver of the said Great Shoshone and Twin Falls Water Power Company, appointed in Equity Cause No. 509, wherein the said Guy I. Towle is plaintiff and the said Great Shoshone and Twin Falls Water Power Company is defendant, for distribution and payment in said cause according to the principles of equity and the respective rights of the creditors of said Great Shoshone and Twin Falls Water Power Company.

(3) Because the Court erred in not entering a decree in favor of the defendant William T. Wallace, as Receiver of the Great Shoshone and Twin Falls Water Power Company, as to all personal property of said defendant Power Company upon which the lien of the mortgages of said The Equitable Trust Company of New York was defective or ineffectual, because said mortgages had not been executed and filed as required by the laws of the State of Idaho relative to mortgages on personal property.

WHEREFORE, These petitioners and appellants pray that said decree and said order of March 1, 1916, be annulled and set aside, insofar as the same direct the payment of said "Unsecured Creditors' Fund" to the said Guy I. Towle, Carl J. Hahn, L. M. Plumer and E. B. Scull, and Jake M. Shank, and that the same may be modified so as to provide that such

“Unsecured Creditors’ Fund” shall be paid to the defendant William T. Wallace, as Receiver of said Power Company, for distribution among all the creditors of said Power Company in said general creditors’ suit, wherein said Guy I. Towle is plaintiff and the said Great Shoshone and Twin Falls Water Power Company is defendant.

WYMAN & WYMAN,

Solicitors for American Water Works & Electric Company, Intermountain Electric Company, The Thousand Springs Power Co., and Guaranty Trust Co. of New York.

FRANK T. WYMAN,

Of Counsel.

[Endorsed]: No. 2791. United States Circuit Court of Appeals for the Ninth Circuit. The Equitable Trust Company of New York et al., Plaintiff, vs. Great Shoshone and Twin Falls Water Power Company et al., Defendants, and L. M. Plumer et al., Interveners. Assignment of Errors. Filed Jun. 2, 1916. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

THE EQUITABLE TRUST COMPANY OF
NEW YORK, as Sole Trustee Under a Deed
of Trust made by THE GREAT SHOSHONE
AND TWIN FALLS WATER POWER
COMPANY, Dated May 1, 1910, and Supple-
mental Mortgages Dated June 21, 1911, and
April 7, 1913,

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion, WILLIAM T. WALLACE, as Receiver
of GREAT SHOSHONE AND TWIN
FALLS WATER POWER COMPANY,
GUY I. TOWLE, and CARL J. HAHN, as
Administrator of the Estate of HARRY M.
KING, Deceased,

Defendants,

and

L. M. PLUMER and E. B. SCULL, Executors of the
Estate of L. L. McCLELLAND, Deceased,
and JAKE M. SHANK,

Interveners.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we American Water Works and Electric Com-
pany, a corporation organized under the laws of
the State of Virginia, Intermountain Electric Com-

pany, a corporation, the Thousand Springs Power Co., a corporation and Guaranty Trust Co. of New York, a corporation organized under the laws of the State of New York, as principals, and the American Surety Company of New York, a corporation organized under the laws of the State of New York, as Surety, are held and firmly bound unto the defendant, Guy I. Towle, Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, Great Shoshone and Twin Falls Water Power Company, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, Equitable Trust Company of New York and L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased and Jake M. Shank, as their respective interests may appear under the decree entered in said cause on the 6th day of December, 1915 and under the order made and entered therein on the first day of March, 1916, in the penal sum of FIVE HUNDRED (\$500.00) DOLLARS, to be paid to the said parties as their respective interests may appear and to their and each of their executors, administrators, successors or assigns not exceeding, however, in the aggregate the said sum of Five Hundred (\$500.00) Dollars to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally by these presents.

SEALED with our seals and dated this third day of June, A. D. one thousand nine hundred and sixteen.

THE CONDITION of this obligation is such that: Whereas the above-named American Water Works and Electric Company, Intermountain Electric Company, The Thousand Springs Power Company and Guaranty Trust Co. of New York have presecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the place and stead of the said William T. Wallace as Receiver of said Great Shoshone and Twin Falls Water Power Company, from a decree made and entered in said cause on the sixth day of December, 1915, and from a certain order made in said cause on the first day of March, 1916, by the United States District Court for the District of Idaho, Southern Division;

NOW, THEREFORE, if the above-named principals, American Water Works and Electric Company, Intermountain Electric Company, The Thousand Springs Power Co. and Guaranty Trust Co. of New York shall prosecute their said appeal to effect and, if they fail to make their said appeal good, shall answer all costs, then the above obligation to be void, otherwise the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF the said principals have caused their respective names to be hereunto subscribed by their duly authorized solicitors and the said surety has caused its name to be hereunto subscribed by its duly authorized officers and its corpor-

ate seal affixed the date and year first above written.

AMERICAN WATER WORKS AND
ELECTRIC COMPANY,

By WYMAN & WYMAN,

Its Solicitors.

INTERMOUNTAIN ELECTRIC COM-
PANY.

By WYMAN & WYMAN,

Its Solicitors.

THE THOUSAND SPRINGS POWER
COMPANY,

By WYMAN & WYMAN,

Its Solicitors.

GUARANTY TRUST COMPANY OF
NEW YORK,

By WYMAN & WYMAN,

Its Solicitors.

AMERICAN SURETY COMPANY OF
NEW YORK.

H. J. DOUGLA,

Resident Vice-President.

[Seal]

Attest: F. E. BRISBINE,

Resident Assitant Secretary.

[Endorsed]: No. 2791. United States Circuit Court of Appeals for the Ninth Circuit. The Equitable Trust Company of New York, as Sole Trustee under a Deed of Trust made by The Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, Plaintiff, vs. Great Shoshone and Twin Falls Water Power Company, a Corpora-

tion, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, Guy I. Towle, and Carl J. Hahn as Administrator of the Estate of Harry M. King, Deceased, Defendants, and A. M. Plumer and E. B. Scull, Executors of the Estate of L. L. McClelland, Deceased, and Jake M. Shank, Interveners. Bond on Appeal. Approved this third day of June A. D. 1916. F. D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit.

Filed Jun. 3, 1916. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

CAUSE No. 2791.

THE EQUITABLE TRUST COMPANY OF NEW
YORK, as Sole Trustee, etc.,

Appellant,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, et al.,

Appellees.

AMERICAN WATER WORKS AND ELECTRIC
COMPANY, a Corporation, Intervener,

Appellant,

vs.

GUY I. TOWLE, et al.,

Appellees.

AMERICAN WATER WORKS AND ELECTRIC
COMPANY, et al.,

Appellants,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER COMPANY, et al.,

Appellees.

**Stipulation Relative to Record on Appeal of Amer-
ican Water Works and Electric Company,
Intermountain Electric Company, Thousand
Springs Power Company, and Guaranty Trust
Company of New York.**

IT IS HEREBY STIPULATED AND
AGREED, between the solicitors for the respective
parties above named, that the appeal allowed the
American Water Works and Electric Company,
Intermountain Electric Company, Thousand Springs
Power Company, and Guaranty Trust Com-
pany of New York, by the United States Circuit
Court of Appeals for the Ninth Circuit on the
2d day of June, 1916, may be considered and deter-
mined upon the printed transcript of the record here-
tofore filed in Cause No. 2791 pending in this court,
wherein the Equitable Trust Company of New York
and American Water Works and Electric Company
are appellants and the Great Shoshone and Twin
Falls Water Power Company et al. are appellees, in
so far as such record may be pertinent to the ques-
tions arising on said appeal, and upon the papers
filed in this court in connection with the perfect-
ing of said appeal, to wit:

- (a) Petition for Appeal.
- (b) Assignment of Errors.
- (c) Order Allowing Appeal.
- (d) Bond on Appeal.
- (e) Citation.
- (f) This Stipulation.

Which last mentioned papers (a to f, inclusive) are to be printed under the supervision of the clerk of the Circuit Court of Appeals at the cost and expense of said appellants, and thereupon the cause including this appeal, shall be submitted to the Court for decision upon the arguments heretofore made and briefs filed in said cause No. 2791.

Dated this 20th day of June, 1916.

P. B. CARTER,
Solicitors for Great Shoshone and Twin Falls Water
Power Company.

S. H. HAYS,
Solicitor for William T. Wallace, Receiver of Great
Shoshone and Twin Falls Water Power Com-
pany.

KARL PAINE,
Solicitor for Guy I. Towle.
J. H. WISE,
By MARTIN & CAMERON,
Solicitor for Carl J. Hahn.

MARTIN & CAMERON,
Solicitor for L. M. Plumer and E. B. Scull, Execu-
tors of the Estate of L. L. McClelland, Deceased.

ALFRED A. FRASER,

Solicitor for Jake M. Shank.

RICHARDS & HAGA,

J. L. EBERLE,

Solicitors for The Equitable Trust Company of New
York.

WYMAN & WYMAN,

Solicitors for American Water Works and Electric
Company, Intermountain Electric Company,
The Thousand Springs Power Company, and
Guaranty Trust Company of New York.

[Endorsed]: No. 2791. United States Circuit
Court of Appeals for the Ninth Circuit. The
Equitable Trust Company of New York, as Sole
Trustee, etc., Appellant, vs. Great Shoshone and
Twin Falls Water Power Company et al., Appellees,
American Water Works and Electric Company, a
Corporation, Intervener, Appellant, vs. Guy I.
Towle et al., Appellees, American Water Works and
Electric Company et al., Appellants, vs. Great Sho-
shone and Twin Falls Water Company et al., Appel-
lees. Cause No. 2791. Stipulation Relative to Rec-
ord on Appeal of American Water Works and
Electric Company, Intermountain Electric Company,
Thousand Springs Power Company, and Guaranty
Trust Company of New York. Filed Jun. 26, 1916.
F. D. Monekton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

CAUSE No. 2791.

THE EQUITABLE TRUST COMPANY OF NEW
YORK, as Sole Trustee, etc.,

Appellant,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY et al.,

Appellees.

AMERICAN WATER WORKS AND ELECTRIC
COMPANY, a Corporation, Intervener,

Appellant,

vs.

GUY I. TOWLE et al.,

Appellees,

AMERICAN WATER WORKS AND ELECTRIC
COMPANY et al.,

Appellants.

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY et al.,

Appellees.

Certificate of Clerk, U. S. District Court.

I, W. D. McReynolds, Clerk of the District Court
of the United States for the District of Idaho, do
hereby certify that there are filed in the general
creditors' suit wherein Guy I. Towle is plaintiff and
the Great Shoshone and Twin Falls Water Power

Company is defendant, being Equity Cause No. 509, pending in the District Court of the United States for the District of Idaho, Southern Division, the following claims, to wit:

The claim of the Intermountain Electric Company filed on August 9th, 1915, in the sum of \$4,717.13;

The claim of The Thousand Springs Power Company filed on August 9th, 1915, in the sum of \$7,000.00;

The claim of the American Water Works and Electric Company filed on August 5th, 1915, in the sum of \$1,268,434.66;

The claim of the Guaranty Trust Company of New York filed on September 23d, 1915, within the time allowed by order of court dated September 15th, 1915, in the sum of \$4,427,443.70.

AND I FURTHER CERTIFY that no objection has been filed to the claims aforesaid, or any of them, in the District Court of the United States for the District of Idaho.

[Seal]

W. D. McREYNOLDS,
Clerk.

Dated June 22, 1916.

[Ten Cent Internal Documentary Stamp. Canceled 6/22/16. W. D. M.]

[Endorsed]: No. 2791. In the United States Circuit Court of Appeals for the Ninth Circuit. The Equitable Trust Company of New York, as Sole Trustee, etc., Appellant, vs. Great Shoshone and Twin Falls Water Power Company et al., Appellees, American Water Works and Electric Company, a Corporation, Intervener, Appellant, vs. Guy I. Towle et al., Appellees, American Water Works and Electric Company et al., Appellants, vs. Great Shoshone and Twin Falls Water Company et al., Appellees. Cause No. 2791. Certificate. Filed Jun. 26, 1916. F. D. Monckton, Clerk.

Citation.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Defendants, Guy I. Towle, Carl J. Hahn, as Administrator of the Estate of Harry M. King, Deceased, Great Shoshone and Twin Falls Water Power Company, a Corporation, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, and to the Interveners, L. M. Plumer and E. B. Scull, Executors of the Estate of L. L. McClelland, Deceased, and Jake M. Shank, and to the Complainant, Equitable Trust Company of New York, as sole Trustee Under a Deed of Trust Made by Great Shoshone and Twin Falls Water Power Company, Dated May 1, 1910, and Supplemental Mortgages Dated June 21st, 1911, and April 7th, 1913.

You are hereby cited and admonished to be and

appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, of record in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein and whereby the American Water Works and Electric Company, the Intermountain Electric Company, the Thousand Springs Power Company and the Guaranty Trust Company of New York, general creditors of the said Great Shoshone and Twin Falls Water Power Company, were allowed an appeal in the place and stead of the said William T. Wallace as Receiver of the said Great Shoshone and Twin Falls Water Power Company in a suit wherein the Equitable Trust Company of New York as Trustee, is complainant, and the said Great Shoshone and Twin Falls Water Power Company, William T. Wallace, as receiver of said Great Shoshone and Twin Falls Water Power Company, Guy I. Towle, and Carl J. Hahn, as administrator of the Estate of Harry M. King, deceased, are defendants, and L. M. Plumer and E. B. Scull, executors of the Estate of L. L. McClelland, deceased, and Jake M. Shank, are interveners, being cause number 2791, now pending in said Circuit Court of Appeals, to show cause, if any there be, why the orders and decree in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. HUNT,

United States Circuit Judge for the Ninth Circuit,
this 5th day of June, A. D. 1916.

WM. H. HUNT,
United States Circuit Judge.

Attest: F. D. MONCKTON,
Clerk, United States Circuit Court of Appeals, Ninth
Circuit.

Service of the foregoing citation and receipt of
copy thereof, admitted this 12th day of June, 1916.

RICHARDS & HAGA and
J. L. EBERLE,

Solicitors for Complainant, Equitable Trust Com-
pany of New York, Trustee.

P. B. CARTER,
Solicitor for Great Shoshone and Twin Falls Water
Power Company.

KARL PAINE,
Solicitor for Guy I. Towle, Defendant.

J. H. WISE.

By MARTIN & CARMERON,
Solicitor for Carl J. Hahn, as Administrator of the
Estate of Harry M. King, Deceased, Defendant.

MARTIN & CAMERON,
Solicitor for L. M. Plumer and E. B. Scull, Executors
of the Estate of L. L. McClelland, Deceased,
Interveners.

ALFRED A. FRASER,
Solicitor for Jake M. Shank, Intervener.

G. H. HAYS,
Solicitor for William T. Wallace, Receiver of Great
Shoshone and Twin Falls Water Power Com-
pany.

[Endorsed]: No. 2791. United States Circuit Court of Appeals for the Ninth Circuit. The Equitable Trust Company of New York, Appellant, vs. Great Shoshone and Twin Falls Water Power Company, a Corporation, et al., Appellees. Citation. Filed Jul. 1, 1916. F. D. Monckton, Clerk.

[Endorsed]: No. 2791. United States Circuit Court of Appeals for the Ninth Circuit. The Equitable Trust Company of New York, as sole Trustee Under a Deed of Trust Made by the Great Shoshone and Twin Falls Water Power Company, Dated May 1, 1910, and Supplemental Mortgages Dated June 21, 1911, and April 7, 1913, vs. Great Shoshone and Twin Falls Water Power Company, a Corporation, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, Guy I. Towle and Carl J. Hahn, as Administrator of the Estate of Harry M. King, Deceased, Defendants and L. M. Plumer and E. B. Scull, Executors of the Estate of L. L. McClelland, Deceased, Jake M. Shank, and American Water Works and Electric Company, a Corporation, Interveners; American Water Works and Electric Company, a Corporation, Intervener, vs. Guy I. Towle, Carl J. Hahn, as Administrator of the Estate of Harry M. King, Deceased, Great Shoshone and Twin Falls Water Power Company, a Corporation and William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, Defendants; L. M. Plumer and E. B. Scull, Executors of the Estate of L. L. McClelland, Deceased,

and Jake M. Shank, Interveners, and the Equitable Trust Company of New York, as Sole Trustee Under a Deed of Trust Made by the Great Shoshone and Twin Falls Water Power Company, Dated May 1, 1910, and Supplemental Mortgages Dated June 21, 1911, and April 7, 1913; American Water Works and Electric Company, the Intermountain Electric Company, The Thousand Springs Power Company and the Guaranty Trust Company of New York, General Creditors of Great Shoshone and Twin Falls Water Power Company, Appellants, vs. Guy I. Towle, Carl J. Hahn, as Administrator of the Estate of Harry M. King, Deceased, Great Shoshone and Twin Falls Water Power Company, a Corporation, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, and Interveners L. M. Plumer and E. B. Scull, Executors of the Estate of L. L. McClelland, Deceased, and Jake M. Shank, and Complainant, Equitable Trust Company of New York, as Sole Trustee Under a Deed of Trust Made by Great Shoshone and Twin Falls Water Power Company, Dated May 1, 1910, and supplemental Mortgages Dated June 21, 1911, and April 7, 1913, Appellees. Supplemental Transcript of Record. Upon Appeals from the United States District Court for the District of Idaho, Southern Division.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

